

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Stephen D. Cunnison, Chair
Douglas C. Miller, Committee Counsel, 415-865-7535,
douglas.miller@jud.ca.gov

DATE: August 18, 2003

SUBJECT: Probate form petition and order for appointment of a guardian ad litem in a probate proceeding (revise form DE-350/GC-100 and adopt new form DE-351/GC-101) (Action Required)

Issue Statement

Existing form DE-350/GC-100, *Petition and Order for Appointment of a Guardian ad Litem Under the Probate Code*, is a combined form petition and order for the appointment of a guardian ad litem in a probate proceeding under Probate Code section 1003. The form requires correction of a cross-reference to a family and juvenile form to reflect a pending proposal to change that form's designator prefix and number effective January 1, 2004. Additional revisions of the existing form would improve its clarity and efficiency. A separate form appointment order would be more compatible with actual practice in the probate departments of the courts.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Revise form DE-350/GC-100 to
 - a. Correct a cross-reference to a family and juvenile law form in the text box at the top of page 1 of the form, to reflect the pending proposal to change the referenced form's designator prefix and number from FJ-200 to FL-935;

- b. Add the following sentence at the end of the text in the text box at the top of page 1 of the revised petition, “A guardian ad litem is NOT the same as the guardian of the person or the estate[.]”;
 - c. Remove the order portion of the existing form at the bottom of page 2;
 - d. Change the title of the form to *Petition for Appointment of Guardian ad Litem—Probate*; and
 - e. Make other clarifying changes.
2. Adopt for mandatory use a separate guardian ad litem appointment order for use in probate proceedings, designated as form DE-351/GC-101, *Order Appointing Guardian ad Litem—Probate*.

Copies of the revised and new forms are attached at pages 5–7.

A copy of existing form DE-350/GC-100, *Petition and Order for Appointment of Guardian ad Litem Under the Probate Code*, is attached for reference at pages 8–9.

Rationale for Recommendation

The proposal to revise existing form DE-350/GC-100 was originally made by the Family and Juvenile Law Advisory Committee to correct cross-references to a family and juvenile law form in all guardian ad litem forms, made necessary by a pending proposal to change the referenced form’s designator prefix and number.¹ The Probate and Mental Health Advisory Committee was asked to review and make a recommendation on this proposal.

In addition to correcting the reference to the family law form in the text box at the top of the form, this advisory committee recommends the addition of a sentence at the end of the Note text cautioning users of the form that the appointment of a guardian ad litem is not the same as the appointment of a guardian of the person or the estate. This clarification could assist a self-represented person, who might be confused by these very similar terms and might therefore believe that the appointment of a guardian ad litem in a probate guardianship proceeding accomplishes the goal of the petition for appointment of a guardian of the person or estate.

¹ See the report to the Judicial Council from the Family and Juvenile Law Advisory Committee entitled *Juvenile Law: Miscellaneous Rules and Forms*. That report recommends that Judicial Council form FJ-200, referenced in the “NOTE” text box just below the caption on page 1 of all guardian ad litem appointment forms, be redesignated as form FL-935, effective January 1, 2004, and that all guardian ad litem forms other than the probate version here involved should be revised to reflect this change. The juvenile law report will be considered by the council at its business meeting on October 21, 2003, when this proposal will also be considered.

The form's title would also be revised to reflect deletion of the order portion of the existing form, and for greater ease of use and reference. The proposed new title, *Petition for Appointment of Guardian ad Litem—Probate*, is offered as a shorter and clearer title than *Petition for Appointment of Guardian ad Litem Under the Probate Code*.

The form family reference below the form's title at the bottom of each page² would also be deleted as unnecessary and potentially misleading. The form must be used in all proceedings under the Probate Code. (See the first sentence in the form's "NOTE" text box.) Not all proceedings under that code can be listed in the reference and the general category, "Probate Law," is misleading because that phrase could be misunderstood to refer only to decedents' estates.

Item 7a on page 2 of the form must be completed where the proposed guardian ad litem is related to the person he or she would be representing. The instructions for that item would be changed to request a statement of the relationship, not the "capacity," an unclear term as used in item 7a.

Several members of the Probate and Mental Health Advisory Committee questioned the combined petition and order format of the existing form. Separate orders are the norm in probate proceedings. Moreover, many of these petitions are set for hearing on the regular probate calendar after notice; they are not presented ex parte. If that occurs, the judge may not have access to the original petition when the matter is heard. The judge will rely instead on the probate staff's notes or on the electronic image of the petition if it has been scanned into the court's computer system. This may cause delay in getting the order signed and filed if the order is part of the petition.

The advisory committee requested the public to comment on whether a separate order form should be developed and adopted. After receiving comments on that issue, the committee concluded that a separate appointment order would be preferable. It proposes the adoption of a separate form, designated as form DE-351/GC-101, *Order Appointing Guardian ad Litem—Probate*. The findings and order portions of the new form are taken from existing form DE-350/GC-100. Item 1 of the order is similar to existing form GC-090, *Order Fixing Residence Outside the State of California*.

Alternative Actions Considered

No actions other than revision of the form petition were considered. The advisory committee did consider retaining the order appointing a guardian ad litem as part of the revised form petition. However, the unanimous comments in favor of a separate order and the unique practices and procedures in the probate court strongly support the committee's decision to propose a separate order.

² "(Probate Law, Conservatorships, Guardianships, Trusts)."

Comments From Interested Parties

This proposal was circulated to an expanded list of probate practitioners and probate law sections of local bar associations in addition to the AOC's regular mailing list, in the spring 2003 circulation for comment.

Six comments were received, all in favor of the revisions. Three commentators responded to the invitation to address the separate order question. All of them supported a separate order.

In addition to agreeing with the concerns expressed by advisory committee members summarized above, Ms. Keri Griffith, a court program manager from the Superior Court, County of Ventura, noted that her court prefers to file the petition immediately when received, to get it into the court's case management system as soon as possible. A combined petition and order cannot be filed until the order portion has been signed by the judge. If the hearing on the petition is set on the regular probate calendar after notice, this means that the unfiled "lodged" petition must be carried in the file for three weeks or more. An order separate from the petition would permit immediate filing of the petition.

A chart showing the public's comments and the advisory committee's responses is attached at pages 10–11.

Implementation Requirements and Costs

The existing form petition and order must be revised because of the proposed change in the family law form referenced in it. The additional changes in the form petition proposed by the advisory committee should not appreciably increase the normal costs of making any change in a form.

Adoption of a new form order as a separate document will incur additional costs incidental to the adoption of any new form. However, the new and revised forms should result in smoother operation of probate departments where these forms will be filed and in shorter petitions that are easier to prepare, file, and review. The net result should be a savings to the courts and those using the new and revised forms.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div>TELEPHONE NO.:</div> <div>FAX NO. (<i>Optional</i>):</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>E-MAIL ADDRESS (<i>Optional</i>):</div> <div></div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>ATTORNEY FOR (<i>Name</i>):</div> <div></div> </div>	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin-top: 20px;">DRAFT 6</div> <div style="font-size: 2em; font-weight: bold; margin-top: 10px;">09/24/03</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
ESTATE OF (<i>Name</i>): <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	
PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM—PROBATE <input type="checkbox"/> EX PARTE	

NOTE: This form is for use in proceedings under the Probate Code, except for compromise of an action to which a minor or incompetent person is a party. A person seeking the appointment of a guardian ad litem in a civil proceeding should use form 982(a)(27). A person seeking the appointment of a guardian ad litem in a family law proceeding should use form FL-935. An individual may not act as a guardian ad litem unless the individual is an attorney or is represented by an attorney. A guardian ad litem is NOT the same as a guardian of the person or the estate.

1. Petitioner (*name*): _____ is
 - a. ☐ personal representative of the estate of:
 - b. ☐ guardian of:
 - c. ☐ conservator of:
 - d. ☐ trustee of:
 - e. ☐ other interested person (*specify capacity*):
2. This petition seeks the appointment of the following person as guardian ad litem (*state name, address, and telephone number*):
3. The guardian ad litem is to represent the interests of the following person (*state name, address, and telephone number*):
4. The person to be represented is
 - a. ☐ a minor (*date of birth*):
 - b. ☐ an incapacitated person.
 - c. ☐ an unborn person.
 - d. ☐ an unascertained person.
 - e. ☐ a person whose identity or address is unknown.
 - f. ☐ a designated class of persons who are not ascertained or are not in being.
5. Appointment of a guardian ad litem arises out of issues regarding
 - a. ☐ the execution of a disclaimer under Probate Code section 277 (*specify details in Attachment 5a*).
 - b. ☐ the representation of the interests of a spouse alleged to lack legal capacity (Probate Code, §§ 3112 and 3140) (*specify details in Attachment 5b*).
 - c. ☐ the consent to modification or termination of trust (Probate Code, § 15405) (*specify details in Attachment 5c*).
 - d. ☐ the approval and settlement of claims against a deceased settlor (Probate Code, § 19029) (*specify details in Attachment 5d*).
 - e. ☐ the representation of a minor, incapacitated person, or other person identified in Probate Code section 1003(a) in a proceeding under the Probate Code (Probate Code, § 1003(a)) (*specify details in Attachment 5e*).
 - f. ☐ other (*specify. Continue in Attachment 5f if necessary*):

ESTATE OF (Name): _____ <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	CASE NUMBER: _____
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6. The appointment of a guardian ad litem is
- a. ☐ proper because the minor has no guardian of his or her estate.
 - b. ☐ necessary for the following reasons (*specify reasons. Continue in Attachment 6b if necessary*):
7. The proposed guardian ad litem's relationship to the person he or she is representing is
- a. ☐ related (*state relationship*):
 - b. ☐ not related (*specify capacity*):
8. The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person he or she is representing as explained in Attachment 8 and has no interest adverse to the interests of that person.
9. Notice of this proceeding
- a. ☐ will be given to the parties named in Attachment 9a.
 - b. ☐ should be dispensed with for the following reasons (*specify reasons for ex parte request. Continue in Attachment 9b if necessary*):

10. Number of pages attached: _____

Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF ATTORNEY)
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
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CONSENT TO ACT AS GUARDIAN AD LITEM

I consent to the appointment as guardian ad litem and I declare under penalty of perjury under the laws of the State of California that the foregoing petition is true and correct.

Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PROPOSED GUARDIAN)
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☐ CONSENT OF MINOR 12 YEARS OF AGE OR OLDER (*Optional*)

I, (name): _____ nominate (name): _____ for the reasons set forth in items 5 and 6 of this petition. Date: _____	▶	, am (<i>specify age</i>): _____ years of age and hereby to be my guardian ad litem to represent my interests
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(TYPE OR PRINT NAME)	▶	(SIGNATURE OF MINOR 12 YEARS OF AGE OR OLDER)
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ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <div style="display: flex; justify-content: space-between;"> <div>TELEPHONE NO.:</div> <div>FAX NO. (<i>Optional</i>):</div> </div> E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):	FOR COURT USE ONLY <div style="font-size: 24pt; font-weight: bold;">DRAFT NO. 2</div> <div style="font-size: 24pt; font-weight: bold;">09/24/03</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (<i>Name</i>): <div style="display: flex; justify-content: flex-end; gap: 20px;"> <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	
ORDER APPOINTING GUARDIAN AD LITEM—PROBATE <input type="checkbox"/> EX PARTE	CASE NUMBER:

1. The petition for the appointment of a guardian ad litem for (*name*):

- a. ☐ a minor (*date of birth*):
- b. ☐ an incapacitated person
- c. ☐ an unborn person
- d. ☐ an unascertained person
- e. ☐ a person whose identity or address is unknown
- f. ☐ a designated class of persons who are not ascertained or are not in being came on regularly for hearing as follows:
- g. Judge (*name*):
- h. Hearing date: Time: ☐ Dept.: ☐ Room:
- i. The following persons were present at the hearing:
 - (1) ☐ Petitioner (*name*):
 - (2) ☐ Attorney for petitioner (*name*):
 - (3) ☐ Guardian ad litem named in item 4.
 - (4) ☐ Attorney for guardian ad litem (*name*):
 - (5) ☐ Person named in item 1.
 - (6) ☐ Other (*name*):

THE COURT FINDS

2. a. ☐ All notices required by law have been given.
- b. ☐ Notice is dispensed with.
3. It is reasonable and necessary to appoint a guardian ad litem for the person named in item 1.

THE COURT ORDERS

4. (*Name*):
is hereby appointed guardian ad litem of (*name*):
for the purposes set forth in items 5 and 6 of the petition.
5. The guardian ad litem ☐ is ☐ is NOT authorized to waive or disclaim any substantive rights of the represented party without further order of this court.
6. ☐ Other (*specify. Continue on Attachment 6 if necessary*):
7. ☐ Number of pages attached: _____

Date:

JUDGE OF THE SUPERIOR COURT
☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <div style="display: flex; justify-content: space-between;"> <div>TELEPHONE NO.:</div> <div>FAX NO. (<i>Optional</i>):</div> </div> <div style="display: flex; justify-content: space-between;"> <div>E-MAIL ADDRESS (<i>Optional</i>):</div> <div></div> </div> <div style="display: flex; justify-content: space-between;"> <div>ATTORNEY FOR (<i>Name</i>):</div> <div></div> </div>	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 20px 0;">DRAFT 6</div> <div style="font-size: 2em; font-weight: bold; margin: 0 0 20px 0;">09/24/03</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (<i>Name</i>): <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	
PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM—PROBATE <input type="checkbox"/> EX PARTE	CASE NUMBER:

NOTE: This form is for use in proceedings under the Probate Code, except for compromise of an action to which a minor or incompetent person is a party. A person seeking the appointment of a guardian ad litem in a civil proceeding should use form 982(a)(27). A person seeking the appointment of a guardian ad litem in a family law proceeding should use form FL-935. An individual may not act as a guardian ad litem unless the individual is an attorney or is represented by an attorney. A guardian ad litem is NOT the same as a guardian of the person or the estate.

1. Petitioner (*name*): _____ is
 - a. ☐ personal representative of the estate of:
 - b. ☐ guardian of:
 - c. ☐ conservator of:
 - d. ☐ trustee of:
 - e. ☐ other interested person (*specify capacity*):
2. This petition seeks the appointment of the following person as guardian ad litem (*state name, address, and telephone number*):
3. The guardian ad litem is to represent the interests of the following person (*state name, address, and telephone number*):
4. The person to be represented is
 - a. ☐ a minor (*date of birth*):
 - b. ☐ an incapacitated person.
 - c. ☐ an unborn person.
 - d. ☐ an unascertained person.
 - e. ☐ a person whose identity or address is unknown.
 - f. ☐ a designated class of persons who are not ascertained or are not in being.
5. Appointment of a guardian ad litem arises out of issues regarding
 - a. ☐ the execution of a disclaimer under Probate Code section 277 (*specify details in Attachment 5a*).
 - b. ☐ the representation of the interests of a spouse alleged to lack legal capacity (Probate Code, §§ 3112 and 3140) (*specify details in Attachment 5b*).
 - c. ☐ the consent to modification or termination of trust (Probate Code, § 15405) (*specify details in Attachment 5c*).
 - d. ☐ the approval and settlement of claims against a deceased settlor (Probate Code, § 19029) (*specify details in Attachment 5d*).
 - e. ☐ the representation of a minor, incapacitated person, or other person identified in Probate Code section 1003(a) in a proceeding under the Probate Code (Probate Code, § 1003(a)) (*specify details in Attachment 5e*).
 - f. ☐ other (*specify. Continue in Attachment 5f if necessary*):

ESTATE OF (Name): _____ <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	CASE NUMBER: _____
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6. The appointment of a guardian ad litem is
- ☐ proper because the minor has no guardian of his or her estate.
 - ☐ necessary for the following reasons (*specify reasons. Continue in Attachment 6b if necessary*):
7. The proposed guardian ad litem's relationship to the person he or she is representing is
- ☐ related (*state relationship*):
 - ☐ not related (*specify capacity*):
8. The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person he or she is representing as explained in Attachment 8 and has no interest adverse to the interests of that person.
9. Notice of this proceeding
- ☐ will be given to the parties named in Attachment 9a.
 - ☐ should be dispensed with for the following reasons (*specify reasons for ex parte request. Continue in Attachment 9b if necessary*):

10. Number of pages attached: _____

Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF ATTORNEY)
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
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CONSENT TO ACT AS GUARDIAN AD LITEM

I consent to the appointment as guardian ad litem and I declare under penalty of perjury under the laws of the State of California that the foregoing petition is true and correct.

Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PROPOSED GUARDIAN)
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☐ CONSENT OF MINOR 12 YEARS OF AGE OR OLDER (*Optional*)

I, (name): _____ nominate (name): _____ for the reasons set forth in items 5 and 6 of this petition.	, am (<i>specify age</i>): _____ years of age and hereby to be my guardian ad litem to represent my interests
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Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF MINOR 12 YEARS OF AGE OR OLDER)
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SPR03-61
Petition and Order for Appointment of Guardian ad Litem

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
1.	Mr. Robert Gerard President, Orange County Bar Association.	A	Y	No specific comments were made.	No response necessary.
2.	Ms. Keri Griffith Court Program Manager, Superior Court of California, County of Ventura.	A	Y	As to the request at the bottom of page 2 of the Invitation to Comment, we are always in favor of a separate petition and order, for the reasons stated in paragraph 6 of the invitation. We also prefer filing the petition when presented so that it may be entered in our case management system and tracked immediately.	The advisory committee agrees with this comment and has prepared a separate order, designated as form DE-351/GC-101.
3.	Mr. Stephen Love Executive Officer, Superior Court of California, County of San Diego.	A	N	The order should be separated from the petition for reasons stated in the Invitation to Comment.	The advisory committee agrees with this comment and has prepared a separate form order.
4.	Ms. Sandra Mason Director of Civil Operations, Superior Court of California, County of San Luis Obispo.	A	N	No specific comments were made.	No response necessary.
5.	Ms. Margaret Anne Payne Member, Trusts and Estates Administrative Committee, Trusts and Estates Section State Bar of California.	AM	Y	We support SPRO3-61 and recommend that the petition and order be on separate forms.	The advisory committee agrees with this comment and has prepared a separate form order.

SPR03-61
Petition and Order for Appointment of Guardian ad Litem

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
6.	Ms. Emily Stuhlbarg President, Emily Stuhlbarg and Associates, Inc., County of Los Angeles, private professional conservator.	A	N	No specific comments were made.	No response necessary.